MARKETING AGREEMENTS

for fruits and vegetables

some questions and answers

Agricultural Marketing Service
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There are twenty-eight marketing agreement and order programs in effect covering fruits and vegetables produced in twenty-one states. More than 135,000 producers participate in these marketing agreement programs. The farm products involved have a farm value in excess of $650,000,000.

Marketing agreements and orders are designed to enable producers to help themselves through industry-government cooperation. The goal is orderly marketing. This can be achieved only through the unceasing efforts of producers exercising continuous, diligent and unselfish cooperation.

MARKETING AGREEMENTS FOR FRUITS AND VEGETABLES

1. What is the underlying authority for marketing agreements and marketing orders?

   The Agricultural Marketing Agreement Act of 1937, as amended, authorizes the Secretary of Agriculture to enter into marketing agreements for any agricultural commodity and to issue marketing orders covering certain specified agricultural commodities. The statute is based upon the authority to regulate interstate commerce, and a marketing agreement or marketing order can regulate the handling of commodities only to the extent that such commodities move in interstate or foreign commerce, or directly burden, affect, or obstruct interstate or foreign commerce.

2. What is the distinction between a marketing agreement and a marketing order?

   A marketing agreement is a voluntary contract entered into by the Secretary of Agriculture and a handler of a particular agricultural commodity. Such an agreement affects only those who sign it. If every handler in a particular industry signed a marketing agreement, there would be no necessity of a marketing order.

   A marketing order is an order issued by the Secretary of Agriculture which makes the terms of the marketing agreement program effective upon all handlers in the industry, irrespective of whether they sign the agreement. In other words, a marketing order is a method by which the terms of the program can be made effective upon an entire industry.

3. What commodities may be covered by a marketing agreement or marketing order?

   A marketing order may be issued for fresh fruits and vegetables including walnuts, almonds, filberts, and pecans, but does not include apples, other than those produced in the States of Washington, Oregon and Idaho. A marketing order cannot be issued for fruits and vegetables for canning or freezing except for olives, grapefruit, and asparagus. In addition, marketing orders may be issued for a number of commodities other than fruits and vegetables. A marketing agreement, however, can be entered into covering any agricultural commodity or product thereof.

4. What is the purpose of a marketing agreement or marketing order?

According to the policy set forth by the Congress, marketing agreements and marketing orders are designed to establish and maintain such orderly marketing conditions for agricultural commodities as will establish prices to farmers at the parity level. In reaching the parity level, current prices may be corrected as rapidly as the Secretary deems to be feasible and in the public interest. The Secretary is authorized to establish and maintain such minimum standards of quality and maturity and such inspection and grading requirements as will be in the public interest. Likewise, the Secretary may establish and maintain such orderly marketing conditions as will provide, in the interest of producers and consumers, an orderly flow of the supply of a commodity to market throughout its normal marketing season to avoid unreasonable fluctuations in supplies and prices.

5. Under what conditions can a marketing order be issued?

A marketing order for any eligible agricultural commodity can be issued only under the following circumstances:

(a) At least two-thirds of the growers by number, or by volume of product covered by the program must approve the issuance of the marketing order. The two-thirds majority means two-thirds of those participating in a referendum and not two-thirds of all growers in the industry.

(b) The handlers of not less than 50 percent, by volume of the commodity covered by the marketing agreement, must sign the agreement.

(c) If, however, handlers fail or refuse to sign the agreement, the Secretary may, nevertheless, issue an order (except grapefruit for canning or freezing) if he finds and determines that it is the only practical means of advancing the interests of producers, and that the failure of handlers to sign the agreement tends to prevent the effectuation of the declared policy of the act.

6. What area may be included in a marketing agreement or marketing order?

There is no specified area which must be included under a marketing agreement or marketing order, but the statute requires that any marketing agreement or marketing order be limited to the smallest regional production area practicable.

7. Who is regulated under a marketing agreement or marketing order?

   The burden of regulation under a marketing agreement program falls upon handlers. The term "handler" is defined in the marketing agreement and order and means the person who markets the product. There is no authority to regulate a producer in his capacity as a producer. However, if a producer markets his own product he then becomes a handler and is subject to the terms of the order. The statute does not permit the regulation of a retailer in the capacity of a retailer.

8. What type of regulation may be included under a marketing agreement or marketing order?

   The statute provides several types of regulatory activity. Any one or a combination of the following methods may be used in a marketing agreement or marketing order:

   (a) Regulation of quality. This is usually accomplished by specifying the grade, size, quality or maturity of the product which may be shipped to market.

   (b) Regulation of quantity. This method of regulation involves the establishment of the quantity of the product which may be shipped to market during a specified period. The total quantity is allocated among all handlers on the basis of either past performance of handlers, or the amount of product each handler has available for current shipment.

   (c) Reserve pools. This method involves the establishment of a reserve pool of the product, and the equitable distribution of returns derived from the sale thereof.

   (d) Surplus control. This type of regulation involves determining the extent of a surplus, providing for the control and disposition thereof, and equalizing the burden of surplus elimination among producers and handlers.

   (e) Containers. A regulation may be undertaken to fix the size, capacity, weight, dimensions, or pack of containers which may be used in marketing fresh or dried fruits, vegetables, or tree nuts, provided that no action may be taken which is in conflict with the Standard Container Acts.

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(f) Research projects. Provisions may be made to undertake marketing research and development projects for the purpose of improving the marketing, distribution and consumption of the commodities covered. This may include marketing research projects and those aimed at disseminating educational information for the purpose of increasing consumption of the commodities involved. It does not authorize advertising or sales promotion programs.

In addition to the above, one or more of the following types or methods of regulation may be included in a marketing agreement or marketing order:

(a) Unfair trade practices. A method may be provided for prohibiting unfair methods of competition and unfair trade practices in the handling of agricultural commodities.

(b) Price posting. This involves the requirement that handlers file their selling prices and such handlers are not permitted to sell at prices lower than such prices as filed. Handlers may change the prices at any time, but adequate notice must be given thereof.

(c) Additional provisions. Such other terms may be included which are incidental to and necessary to effectuate the provisions of the program.

9. Are imports regulated under a marketing agreement or marketing order?

The statute provides, under certain circumstances, for the regulation of imports of the following commodities: tomatoes, avocados, limes, grapefruit, green peppers, Irish potatoes, eggplant, cucumbers and mangoes. No regulation of imports is authorized, however, unless regulations under a marketing order are in effect governing the grade, size, quality or maturity of any of the above-named commodities produced in the United States.

If grade, size, quality or maturity regulations are in effect concerning any of the above-named commodities, the importation into the United States of the commodity is prohibited unless the imported commodity complies with the grade, size, quality

9. (continued)

and maturity regulations issued under the marketing order. If two or more marketing orders are in effect in the United States regulating the same commodity, the importation of such commodity shall be prohibited unless it complies with the grade, size, quality and maturity provisions of the order which the Secretary determines regulates the commodity with which the imported product is in most direct competition.

If the Secretary determines that the application of the restrictions to an imported commodity is not practicable because of variations in characteristics between the domestic and imported commodity, he shall establish such grade, size, quality and maturity restrictions which are equivalent or comparable to those imposed upon the domestic commodity. Notice of not less than three days is required for any such regulation concerning imports.

10. How is a marketing agreement or marketing order instituted?

The formulation and development of a marketing agreement or marketing order is somewhat complex and requires considerable time and effort. The following steps are necessary to develop a marketing agreement and issue a marketing order:

(a) There must be a desire on the part of the industry concerned to enter into a marketing agreement program. A preliminary proposal is drafted for consultation by industry members and groups. General agreement should exist within the industry concerning the detailed provisions of the proposal.

(b) The industry proposal is submitted to the Secretary of Agriculture with a request for a public hearing. The request for a hearing should be signed by members or organizations representing the majority of the industry.

(c) The statute requires that a public hearing be held. Notice thereof must be given at least fifteen days prior to the day of the hearing, and the notice must be published in the FEDERAL REGISTER. Copies of the notice of hearing are mailed to all known growers and handlers. The hearing is held in the area covered by the program and may be held in one or more places for the convenience of the industry concerned.

10. (c) (continued)

The hearing is presided over by a hearing examiner. All evidence and testimony is taken under oath and cross examination is permitted. The hearing is an important step in the development of a marketing agreement program and should be given a great deal of attention. Any order issued must be supported by substantial and reliable evidence contained in the hearing record, consequently it is well to make complete and detailed preparation for the hearing. At the close of the hearing a period of time is ordinarily fixed, during which written briefs or arguments may be filed.

(d) After the close of the hearing and the expiration of the period for filing briefs, the Administrator prepares and files a recommended decision. This recommended decision outlines the issues developed at the hearing, how the issues were resolved, and contains the terms of the marketing agreement as revised on the basis of the evidence presented at the hearing. This report is published in the FEDERAL REGISTER, and all interested parties are given a period of time during which to file exceptions thereto.

(e) After the expiration of time for filing exceptions to the recommended decision of the Administrator, the exceptions are analyzed and the decision of the Secretary with respect to the marketing agreement is prepared and announced. This decision rules upon the exceptions which were filed and contains the findings and conclusions of the Secretary with respect to the terms and provisions of the marketing agreement. The Secretary's decision is published in the FEDERAL REGISTER.

(f) The marketing agreement, as approved by the Secretary, is submitted for approval of growers and handlers. Copies of the agreement are sent to handlers for their signatures. At the same time, a referendum of producers is ordinarily conducted to determine whether the proposal is approved by producers. A referendum is not required by the statute, but in most industries it is the most practical method by which the views of the producers may be obtained. Such a referendum is conducted by the Department and ballots are held confidential.

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(g) If the handlers sign the agreement and producers approve the issuance of the order, the Secretary may issue an order making the terms of the marketing agreement program effective upon the entire industry. No order may be issued, however, unless it is approved by growers as outlined above. The order is published in the FEDERAL REGISTER effective on a specified date.

11. How is a marketing agreement or marketing order operated or administered?

All marketing agreements and orders for fruits and vegetables provide for a committee of growers, handlers, or both, to administer the terms of the agreement and order. The method of selecting the committee members is outlined in the agreement and order. Members of the committee are ordinarily nominated by growers and handlers in the industry and appointed by the Secretary of Agriculture. The term of office, powers, duties, and obligations of the committee are set forth in the marketing agreement and marketing order.

12. How is a marketing agreement or marketing order financed?

The statute specifies that the cost of administration of a marketing agreement or marketing order shall be financed by assessments upon handlers. The administrative committee prepares a budget each year, together with a proposed rate of assessment, and makes such recommendations to the Secretary of Agriculture. The Secretary fixes the total amount which the committee may spend and levies an assessment upon handlers in order to obtain funds to finance the program. The assessment is ordinarily in terms of so much per box, bag, or other unit of product shipped during each season. The committee is responsible for all expenditures. If more money is collected than necessary to finance the program it is credited to the handlers for the following year, or paid back on a pro rata basis. The committee is required to keep accurate books and records and an audit of its books is conducted at least once a year.

13. How are regulations devised and issued?

The Administrative Committee is responsible for recommending to the Secretary of Agriculture appropriate regulation of shipments. It should be remembered that the marketing

13. (continued)

agreement and marketing order, except in a few instances where minimum standards of quality and maturity are set forth, are enabling documents and merely specify the type and permissible scope of the regulation; no specific regulations covering any particular period of time are ordinarily included. The Administrative Committee is required to analyze crop and market conditions and recommend to the Secretary of Agriculture appropriate regulations and the period of time during which they should be made effective. Such a recommendation is transmitted to the Secretary and, if approved, an appropriate order is issued. This method permits the representatives of the industry to devise the type of regulation which should be made effective for the industry as a whole. All such regulations must be published in the FEDERAL REGISTER. If there is a short crop, or for other reasons no regulation is necessary, the agreement and order can be suspended or remain inoperative. There is no requirement that the program be operated continuously each season.

14. How is a marketing agreement and marketing order enforced?

The enforcement of a marketing agreement and marketing order is primarily the responsibility of the Federal Government, but the Administrative Committee is charged with the duty of investigating and reporting complaints of violation. If a violation is discovered, it is investigated and turned over to the Department of Justice for prosecution. If regulations are based upon the grade, size, quality or maturity of the product marketed, it is necessary to have mandatory inspection of all shipments in order to enforce the terms of the regulation. There are three types of legal action which may be taken against a person who violates an order:

(a) Civil action to obtain an injunction. This will prevent the person from further violation of the order.

(b) Criminal action may be brought in court and if convicted a person may be fined not less than fifty dollars and not more than five-hundred dollars for each violation.

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(c) Civil suit may be instituted for triple damages, under which a person may be required to pay three times the value of the product shipped in violation of the order.

15. Does the Administrative Committee perform any other functions?

The scope of activity of the administrative committee is somewhat flexible. Under many marketing agreement programs the committee has established statistical departments, and detailed statistics and shipping information are made available to the industry. The committee may undertake other activities for the benefit of the industry so long as the activities are necessary under the marketing agreement program.

16. Are there any exemptions from a marketing agreement or marketing order, or from regulations issued thereunder?

The marketing agreement and marketing order specify the type of shipments which are not covered and not subject to regulation. Furthermore, the agreement and order may provide for exemptions to growers under certain conditions. For instance, a grower might have an extremely poor quality crop with only a small portion of the product eligible for shipment under existing regulations. If deemed advisable, an exemption can be granted which would authorize such a grower to ship as large a proportion of his crop as the average shipped by the entire industry. Such a provision is not mandatory and is left to the discretion of the industry concerned.

17. How can a marketing order be terminated?

A marketing order can be terminated at any time by the Secretary upon a determination that the order no longer effectuates the declared policy of the act. The Secretary is required to terminate any marketing order whenever a majority of the growers who produce at least one-half of the product request that the order be terminated.